

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG MICHAEL KIRK

Plaintiff,

V.

MUSKINGUM COUNTY, OHIO, et al.

Defendants.

CASE NO. 2:09CV583

JUDGE JAMES L. GRAHAM

MAGISTRATE JUDGE PRESTON DEAVERS

**REPLY BRIEF OF DEFENDANTS VILLAGE
OF FRAZEYSBURG AND OFFICER
SCHILLING IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Pending before the Court is the Motion for Summary Judgment of Defendants Village of Frazeysburg and Officer Schilling. In their motion, Defendants demonstrate that they are entitled to judgment in their favor with respect to Plaintiff's remaining claims against them for excessive force and unlawful search of Plaintiff's vehicle.

Plaintiff has filed his Opposition to Defendants' summary judgment motion. For the following reasons, Plaintiff's opposition is without merit. As such, Defendants are entitled to judgment as a matter of law.

To begin with, Plaintiff devotes most of his Opposition to his objection to Officer Schilling's narrative report regarding the arrest of Plaintiff on September 1, 2007 and the impoundment of his vehicle. Officer Schilling's report was authenticated by the affidavit of Officer Schilling attached to Defendants' summary judgment motion.

In his Opposition, Plaintiff claims that Officer Schilling's narrative report is a "brand new police report which plaintiff has never seen before issued in discovery." This is not true. On August 5, 2010, Defendant Frazeyburg served upon Plaintiff its response to Plaintiff's demand for discovery. See Defendant Village of Frazeyburg's Responses to Plaintiff's Discovery Demand attached hereto. Included in Defendant's discovery response were "the reports and records (with applicable redactions) concerning the traffic stop and arrest of Plaintiff on September 1, 2007." Attached to Defendant's discovery response was Officer Schilling's narrative report regarding Plaintiff's arrest. Thus, it is clear that Defendants disclosed Officer Schilling's report to Plaintiff during discovery.

Regardless, Defendants' summary judgment motion was supported with other admissible, competent evidence demonstrating that they are entitled to judgment in their favor. That is, Defendants demonstrated that Officer Schilling did not use excessive or unreasonable force upon Plaintiff while taking him into custody. Further, Officer Schilling's search of Plaintiff's vehicle was an administrative inventory search in accordance with the Village of Frazeyburg Police Department's impounded vehicle inventory policy. Additionally, Defendant Officer Schilling is entitled to qualified immunity with respect to Plaintiff's claims against him.

Plaintiff has failed to present competent, admissible evidence in support of his claims. As such, Plaintiff's Opposition to Defendants' motion is without merit.

For the reasons stated herein, and in their initial motion, Defendants Village of Frazeyburg and Officer Schilling respectfully request that this Honorable Court grant judgment in their favor.

Respectfully submitted,

s/ Nick C. Tomino

NICK C. TOMINO (0021132)
TOMINO & LATCHNEY, LLC, LPA
803 E. Washington St., Suite 200
Medina, Ohio 44256
(330) 723-4656
*Attorney for Defendants Village of Frazeyburg
and Officer Schilling*

CERTIFICATE OF SERVICE

Counsel has been notified of this filing via the U.S. District Court's ECF System at the e-mail addresses listed on the system or via regular U.S. mail on this 16th day of February, 2011.

Craig M. Kirk, *Pro Se*
P.O. Box 206
Warsaw, Ohio 43844

s/ Nick C. Tomino

NICK C. TOMINO (0021132)